steps to transfer the case to the Sessions Court. What the learned Magistrate/President should have done in this case was not to accept his plea of guilty but to transfer the case to the Sessions Court. He should have adjourned the Court for a few minutes, registered the case as a Sessions Court case and charged him in the Sessions Court. One cannot assume a dual personality on the Bench.

The appeal is dismissed. The sentence of 3 years' imprisonment to be followed by 12 months police supervision is confirmed.

There is another thing which I would suggest to the learned Deputy Public Prosecutor. He might instruct the prosecuting officers to supply to the Court a copy of the previous convictions of the convicted person and it is the duty of both the Court as well as the prosecuting officer to see that each and every item in the list of previous convictions be read and explained to the accused and it is for the accused to admit or deny each and every item. Here there is no record in this file to show that the accused has admitted all or any of his previous convictions and unless and until it is done he is supposed to have no previous convictions.

Now all the previous convictions appear to be for theft, criminal breach of trust, loitering etc. Nowhere in this long list of previous convictions is a crime of violence.

Whipping should not be imposed unless the crime committed is one of violence. The sentence of 12 strokes with the rattan is set aside.

Appeal dismissed.

Sentence varied.

PUBLIC PROSECUTOR v. HO TAN SZE

[A.Cr.J. (Ismail Khan J.) March 16, 1963]

[Seremban — Criminal Appeal No. 7 of 1961]

Moneylenders Ordinance, 1951, ss.3 and 8(b)—Single moneylending transaction—No licence—Reversal of onus.

Pawnbrokers Enactment (Cap. 85), s. 25—Alternative charge under—Isolated moneylending transaction—Whether pawnbroker is a moneylender—Onus.

The respondent had advanced a sum of $350 at a remunerative rate of interest and had taken three gold brooches as security. He was charged under section 8(b) of the Moneylenders Ordinance and, alternatively, under section 3(i) of the Pawnbrokers Enactment but was acquitted and discharged without his defence being called. The Public Prosecutor appealed on the ground that there was evidence, which, if unrebutted would warrant a conviction in respect of the first charge.

Held: (1) when a single moneylending transaction is proved against a party, then the onus of proving that he is not carrying on business as a moneylender passes to him;

(2) in this case there was evidence that the respondent had no moneylender's licence and that he had lent money at a remunerative rate of interest, therefore, all the conditions necessary to attract the operation of the presumption in section 3 of the Ordinance were present and the defence should have been called.

Cases referred to:—

(1) *Newton* v. *Pyke* (1908) 25 T.L.R. 127.

(2) *Kirkwood* v. *Gadd* [1910] A.C. 422, 431.

(3) *Newman* v. *Oughton* [1911] 1 K.B. 792, 795, 796.

(4) *Sadhu Singh* v. *Sellathurai* [1955] M.L.J. 117, 119.

MAGISTRATE'S CRIMINAL APPEAL.

Mohd. Salleh bin Abas (Deputy Public Prosecutor) for the appellant.

Edgar Joseph, Jr. for the respondent.

Ismail Khan J.: The respondent was charged as follows:—

"That you on 11.11.59 at about 4.15 p.m. at No. 65, Paul Street, Seremban, did carry on business as a moneylender without holding a licence and that you thereby committed an offence punishable under section 8(b) of the Moneylenders Ordinance 42 of 1951."

In the alternative he was charged as follows:—

"That you on 11th November, 1959 at about 4.15 p.m. at No. 65, Paul Street, Seremban, without you having been granted a licence under the Pawnbrokers Enactment (Cap. 85) did act as a pawnbroker, and that you thereby committed an offence under section 3(i) and punishable under section 25 of the aforesaid Enactment (Cap. 85)."

The President acquitted and discharged the respondent without calling for the defence as he held that the prosecution had not made out a case beyond reasonable doubt either in respect of the main charge or the one in the alternative. Against this acquittal the learned Public Prosecutor has appealed on the ground that there was evidence which, if unrebutted, would warrant a conviction in respect of the first charge.

According to the prosecution, the respondent was the manager of Chop Heng Sheng which had a licence to operate a pawnbroking business at No. 13, Main Road, Mantin. Apart from the evidence of P.W.5, there was ample evidence, particularly the evidence of P.W.4 and the pawn ticket (P2), that on 11th November, 1959, the respondent had advanced a sum of $350 to P.W.5 at a remunerative rate of interest and had taken as security 3 gold brooches.

Section 2 of the Pawnbrokers Enactment reads as follows:—

"In this Enactment the word 'pawnbroker' shall mean and include any person who purchases or receives any article and pays money for or advances money upon the same to an amount not exceeding two hundred and fifty dollars with or under any undertaking, agreement, or

condition, express, implied, or reasonably to be inferred from the nature of the dealing and the usage in respect thereof, that the said article may be afterwards redeemed or re-purchased upon any terms whatsoever."

It was therefore submitted on behalf of the appellant that the respondent was, in respect of this transaction, a moneylender and not a pawnbroker as the amount advanced was in excess of $250. It was also urged that the money was lent at a remunerative rate of interest and as the evidence showed that the respondent had no licence as a moneylender, the ingredients of the offence had been established and that the defence should have been called.

For the respondent it was argued that the prosecution evidence showed he was normally carrying on his business as pawnbroker, and here only one isolated case outside the pawnbroking business was proved and that did not bring him within the definition of a moneylender within the meaning of the Ordinance, unless there was evidence of some degree of system and continuity in his moneylending transactions.

In support of this proposition the following English cases were cited:—*Newton* v. *Pyke*,[1] *Kirkwood* v. *Gadd*,[2] *Newman* v. *Oughton*[3].

In the case *Sadhu Singh* v. *Sellathurai*[4], Thomson J. (as he then was) accepted that proposition as a correct statement of the law, but he proceeded to observe that "in its application it has to be remembered that here and in Singapore once a single moneylending transaction is proved against a party then the onus of proving that he is not carrying on the business of moneylending passes to him. In this connection it is to be observed in considering the way in which the English Courts have applied the law to the facts of individual cases that the English Moneylenders Act of 1900 contains no 'reversal of onus' provision similar to our section 3."

Section 3 of the Moneylenders Ordinance, No. 42 of 1951, after referring to certain exceptions which are not relevant in this case, says that "any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

In this case there was evidence that the respondent had no moneylender's licence and that he had lent money at a remunerative rate of interest. All the conditions necessary to attract the operation of the presumption in section 3 of the Ordinance were therefore present. The defence should have been called.

The appeal is allowed, the order of acquittal set aside and the case is remitted to the Sessions Court for the President to deal with it according to law.

Appeal allowed.

Solicitors:—*Joseph & Son.*

LIM CHIN AIK v. REGINA (No. 2)

[P.C. (Viscount Radcliffe, Lord Evershed & Lord Devlin) April 3, 1963]

[Privy Council Appeal No. 1 of 1962]

Criminal Procedure—Costs—Against Crown.

The Privy Council allowed an appeal by the appellant (*supra* p. 50) against his conviction of contravening section 6(3) of the Immigration Ordinance and directed the Crown to pay the costs of the appeal. On a petition by the Crown against the order for costs,

Held: (1) there is no absolute rule of practice that in no case can a successful appellant in a criminal matter before the Board receive costs from the respondent;

(2) in this case the order for costs did not amount to a censure of the Crown, but was appropriate since the Crown from the first had been involved in illegal proceedings against the appellant.

Case cited in argument:—

(1) *Teper* v. *R.* [1952] A.C. 480, 493; [1952] 2 All E.R. 447.

PRIVY COUNCIL—PETITION.

By this petition the Crown sought to have set aside the order of the Board in their judgment in *Lim Chin Aik* v. *R.* (*supra*, p. 50) that the Crown should pay the costs of the successful appellant. The Board had allowed the appeal of Lim Chin Aik against his conviction of contravening section 6(3) of the Immigration Ordinance of Singapore by remaining in Singapore (after he had entered) when he had been prohibited from entering by an order made by the Minister under section 9 of the Ordinance.

J. G. Le Quesne Q.C. and *Mervyn Heald* appeared for the Crown. The most recent relevant authority on the question of costs in criminal appeals is *Teper* v. *R.*[1] where it was said that "the practice of the Board is against giving expenses to the successful appellant in a criminal appeal save in very special circumstances.... In the present case there are no circumstances which would justify a departure from the "ordinary rule of practice." At the hearing of the present appeal no argument was addressed by either party, or invited by the Board, on any question relating to the costs of the appeal. In my experience it has never been the practice to discuss costs in criminal cases unless an application is made for them. It is not said that the practice is always binding on the Board, but there has never been any suggestion that there is any alteration in the practice. The offence of which the Crown has been guilty here is misinterpretation of the statute, and of no misconduct beyond that, and the Board in its judgment described the interpretation as being a difficult point and one of importance. It was open to the Crown to say that they were acting in Singapore on certain authorities in this country, which it has been necessary for the Board to disapprove. When the question is one of interpretation of a section on an important and diffi-